

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17508
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On June 23, 2003, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1998 through 2001 in the total amount of \$7,525.

On July 24, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather submitted documents stating the Tax Commission misapplied sections 6201 and 6331 of Title 26 USC and committed mail fraud. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed his 1998, 1999 and 2001 Idaho individual income tax returns stating that he had zero income. The taxpayer included with his returns a statement that he had no income in a constitutional sense as the word is used in Internal Revenue Code (IRC) section 61. The taxpayer stated the constitutional meaning of the word income is corporate profit. He had no corporate profit; therefore, he had no income. In addition to no income, the taxpayer stated the income tax is 100% voluntary and he chooses not to be held liable for a 16th Amendment corporate excise tax.

The Tax Discovery Bureau (Bureau) reviewed the taxpayer's returns, obtained other information on the taxpayer and determined he did in fact have income that was reportable on his Idaho income tax returns. The Bureau corrected the taxpayer's returns and prepared a 2000

return for the taxpayer. The Bureau sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

The taxpayer submitted a 2000 Idaho income tax return reporting zero income and a statement setting forth his position. The taxpayer stated there is no section in the IRC that establishes an income tax liability or that income tax has to be paid on the basis of a return. He stated that 1040 forms with zeros in the spaces provided were found to qualify as returns and he cited three court cases that ruled on the matter. The taxpayer also continued with his no income argument because he had no corporate activities or corporate profit.

The Bureau recognized the taxpayer's statements as akin to those of the tax protestor movements, so the matter was referred for administrative review. The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer responded with a document titled "IMPLIED LEGAL NOTICE: MISSAPPLICATION OF TITLE 26 USC SECTIONS 6201 and 6331 SIGNING OF FALSE DOCUMENTS AND MAIL FRAUD." In the document, the taxpayer states that the collection action brought against him is unauthorized by statute and in error. He says the Tax Commission is misapplying Title 26 USC sections 6201 and 6331, and misusing the authority of these sections for a collection action against him. Eventually the taxpayer came to the point that if the Tax Commission's collection action did not stop, he would file a complaint with the Treasury Inspector General for Tax Administration. He stated the collection action was in violation of the Restructuring and Reform Act of 1998.

The Tax Commission reviewed the taxpayer's arguments and found none of them persuading. The taxpayer's reference to "income", as used in the 16th Amendment and defined by the Supreme Court, to mean only corporate profit is totally unfounded. The taxpayer relies on

a statement made by the Supreme Court in Merchant's Loan and Trust Company, 255 U.S. 509 (1921), where the Court said the word income must be given the same meaning in all of the income tax acts that was given to it in the Corporation Excise Tax Act of 1909. By this statement the taxpayer assumed income to mean only corporate profits. However, the Court did not say income was solely corporate profit. The Court stated that the Corporation Excise Tax Act of August 5, 1909 defined the word income. The Court said it was obvious that the decisions written in developing the definition of the word "income" as used in the Corporation Excise Tax Act of 1909 had the same meaning and content in the Income Tax Acts of 1913, 1916 and 1917. This does not mean that income is only corporate profit. It means income is what the Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. The Tax Commission finds this argument misapplied and misconstrued.

Taxable income is defined in IRC section 63 as, "gross income minus the deductions allowed by this chapter (other than the standard deduction)." Section 61 of the IRC defines gross income as, "all income from whatever source derived." The section then goes on to give a list of nonexclusive examples of items that make up gross income. The taxpayer reported on a credit application that he was the owner of [Redacted] and that he received a monthly income of \$2,200. This income is clearly included as part of the taxpayer's gross income. Since the Idaho Code, section 63-3002, follows the IRC relating to the measurement of taxable income, it is clear the taxpayer had income to report on his Idaho income tax returns.

The taxpayer made the statement that the income tax is 100% voluntary and that he chooses not to be liable for the tax. The Tax Commission assumed by this statement the taxpayer believes the tax laws are optional. While it is true both the federal and Idaho tax laws

are based on honest and forthright self-reporting, this does not support the argument that these laws are optional. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988); United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985). The U.S. Supreme Court in Flora v. United States, 362 US 145 (1960), noted that the government could collect the tax by exercising its power of distraint, "but we cannot believe that completing resort to this extraordinary procedure is either wise or in accord with congressional intent." Id. at 175. In other words, Congress can collect taxes by force, but the court believed that Congress intended to give taxpayers an opportunity to comply before exercising that force.

In Helvering v. Mitchell, 303 U.S. 391, 399 (1938), (which was cited in the Flora decision) the court explained voluntary compliance as follows:

In assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil.

Furthermore, when confronted by claims that income taxes are "voluntary," courts readily explain that the payment of income tax is mandatory, not optional.

Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. Id., (citing 26 U.S.C. § 7203).

United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).

The taxpayer made reference to a collection action the Tax Commission was doing against him on a Notice of Deficiency Determination dated August 15, 2001. That action was from a prior determination of the Tax Commission and has nothing to do with the matter at hand. No collection actions have begun on the Notice of Deficiency Determination decided here. Therefore, the Tax Commission finds it unnecessary to address the taxpayer's claims of signing false documents and mail fraud.

The taxpayer has not shown that his income was exempt from reporting on his Idaho individual income tax returns. He has not met his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). Therefore, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated June 23, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$1,340	\$ 335	\$489	\$2,164
1999	1,332	333	389	2,054
2000	1,297	324	275	1,896
2001	1,210	303	163	<u>1,676</u>
			TOTAL DUE	<u>\$7,790</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]

Receipt No.
